

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

BUFFALO PATENTS, LLC,

Plaintiff,

V.

ZTE CORPORATION,

Defendant.

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CIVIL ACTION NO. 6:21-cv-1065-ADA

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION FOR LEAVE
TO FILE A SUR-REPLY TO DEFENDANT’S MOTION TO DISMISS FOR
IMPROPER SERVICE AND LACK OF PERSONAL JURISDICTION**

Defendant ZTE Corporation opposes Plaintiff's motion for leave to file a sur-reply as both baseless and untimely. (Dkt. 17.). For the reasons presented below, ZTE Corporation respectfully requests that the Court deny Plaintiff's motion for leave.

On the merits, the record shows that ZTE Corporation’s reply did not present any new arguments to justify a sur-reply. First, ZTE’s reliance on the Court’s *ACQIS* decision was not new. (*See* Mot. at 1, *citing* Dkt. 16 at 1-3; *ACQIS LLC v. Lenovo Group, Ltd.*, No. W-20-CV-00967-ADA, 2021 WL 5332314 (W.D. Tex. Nov. 16, 2021)). The Court’s decision in *ACQIS* was the central authority for ZTE’s original motion, and Plaintiff had every opportunity to analyze and address *ACQIS* in its response brief. Indeed, Plaintiff’s response brief offered nearly twice as many pages of argument on this issue as ZTE Corporation’s motion and reply brief combined. (*Compare* Dkt. 15 at 2-17 *with* Dkt. 14 at 4-7 *and* Dkt. 16 at 1-3.) Rather than addressing any purportedly new arguments, Plaintiff’s proposed sur-reply merely rehashes its existing criticism of and request for the Court to reconsider the *AQUIS* decision. (Ex. A at 5-6.)

Second, ZTE Corporation's argument that alternative service should not be granted was also not new. (*See* Mot. at 1.) ZTE Corporation anticipated Plaintiff's request for alternative service in its original motion, arguing that no such request should be granted in view of the Court's decision in *STMicroelectronics*. (Dkt. 14 at 7 n.3 (*citing* *Trs. of Purdue Univ. v. STMicroelectronics*, N.V., No. 6:21-CV-00727-ADA, 2021 WL 5393711, at *2-3 (W.D. Tex. Nov. 18, 2021) (denying motion for alternative service of a foreign defendant where the plaintiff had made no effort to comply with the Hague Service Convention)).) Indeed, ZTE Corporation's original motion cited all of the same cases cited in its reply brief, except for one. (*Compare* Dkt. 14 at 7 n.3 *with* Dkt. 16 at 3-6.) The only new case ZTE Corporation cited in reply was *In re OnePlus*, which the Court had already cited in *STMicroelectronics*. *See* 2021 WL 5393711, at *3 (*citing In re OnePlus*, 2021 WL 4130643, at *4.)

Beyond the merits, Plaintiff waited two weeks to file its proposed sur-reply. If Plaintiff's brief had been a reply filed under Local Rule CV-7(E), it would have been untimely. *See* L.R. CV-7(E)(2) (reply brief to be filed "not later than 7 days after the filing of the response to the motion"). Plaintiff's brief is no more timely as a proposed sur-reply.

For all of these reasons, ZTE Corporation respectfully requests that the Court deny Plaintiff's motion for leave to file a sur-reply.

DATED: April 1, 2022

Respectfully submitted,

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*Counsel for ZTE Corporation for the limited purposes
of presenting ZTE Corporation's motion to dismiss
and opposing Plaintiff's motion for leave*

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2022, a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which forwards electronic notification of such filing to all counsel of record.

/s/ Everett Upshaw